

Bureau of Land Management, Interior

§ 3400.2

(oo) *Surface Mining Officer* means the regulatory authority as defined in 30 CFR Chapter VII.

(pp) *Valid existing rights* as used in § 3461.1 of this title is defined in 30 CFR 761.5.

(qq) *Written consent* means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) *Arm's length transaction* means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) *Bracket* means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of part 3480 of this title on the date of first production.

(3) *Controlled by or under common control with*, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) *Entity* means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) *Holds and has held* means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The

holds and has held requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. *Working interest* includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) *Producing* means actually severing coal. A lease is also considered producing when:

(i) The operator/leasee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii) Coal severance is temporarily interrupted in accordance with §§ 3481.4-1 through 4-4 of this chapter.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33133, 33134, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 43921, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987; 62 FR 44369, Aug. 20, 1997]

§ 3400.1 Multiple development.

(a) The granting of an exploration license, a license to mine or a lease for the exploration, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;